



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 482 OF 2023**

Shri. Ulhas N. Prabhu Gaonkar,
Son of late Narayan Prabhu Gaonkar,
Married, aged 64 years,
R/o H. No. 539, Kolsar,
Galgibaga, Painguinim,
Canacona, Goa.

... Petitioner***Versus***

Mrs. Monica Barreto,
W/o Mr. John Rebello,
Aged 61 years, housewife,
R/o H. No. 329, Madya,
Sedolxem, Painguinim,
Canacona, Goa.

...Respondent

***Mr. R. G. Ramani, Senior Advocate with Mr. Pranav Shenvi
Kakodkar, Advocate for the Petitioner***

***Mr. Varun Bhandankar, Advocate for the Respondent under
Free Legal Aid Scheme.***

CORAM**: VALMIKI MENEZES, J.****DATED****: 5TH AUGUST, 2025.****ORAL JUDGMENT:**

1. Heard learned Advocate for the parties.

2. Rule. Rule is made returnable forthwith; at the request of and with the consent of the learned Advocates for the parties, the matter is finally heard and disposed of. Learned Advocate Mr. Pranav Shenvi Kakodkar waives service for the Petitioner and learned Advocate Mr. Varun Bhandankar, under Free Legal Aid waives service for the Respondent.

3. This is a petition which impugns Judgment and order dated 09.03.2022 passed by the District Judge-2, Fast Track Court-II South Goa, Margao in Miscellaneous Civil Application setting aside the order dated 16.11.2021, passed by Civil Judge Senior Division, Canacona in Regular Civil Suit No. 44/2019 by which an application for the temporary injunction was granted to the Plaintiff and the Defendant was, by way of temporary injunction restrained from entering or occupying the suit house and changing the nature thereof; the trial court had further directed that Defendant should remove herself and her belongings from the suit house and suit property within 30 days of the order and deposit the keys of the suit house to the Head Clerk of the Court until disposal of the suit.

The Petitioner is the original Plaintiff in the suit and Respondent, whilst the Defendant.

Submissions:

4. The learned Senior Advocate Mr. R. G. Ramani has advanced the following submissions:

(a) The Appellate Court, exercising jurisdiction under Order 43 of CPC in an Appeal from Order which has granted the discretionary interim relief of injunction, could not have re-appreciated the material on record and come to its own conclusion; it was submitted that the conclusions and findings arrived at by the Trial Court were reasonably possible and the discretion exercised by the Trial Court was after considering the documents on record. Such findings were not open to reversal, merely because a different view was possible. It was further the arguments of learned Senior Advocate for the Petitioner that the Appellate Court has ignored the settled principle of law whilst exercising Appellate Jurisdiction against an interlocutory injunction order as laid down in ***Wander Ltd. V/s Antox India P. Ltd.***, reported in ***1990 (Supp) Supreme Court Cases 727***, and has instead reappraised the entire material on record to arrive at its own conclusion in substitution of the findings rendered by the Trial Court. It was submitted that unless findings of the Trial Court, after analysing the records, are perverse, arbitrary or capriciously rendered or the Trial Court has ignored the settled principles of law on grant of injunction, the Appellate Court ought not to have interfered with the discretion exercised by the Trial Court.

(b) Learned Senior Advocate, after making reference to specific documents on record submits that the Trial Court had considered these documents, and rendered a finding that the possession of the suit property and the suit house just prior to the suit being filed, was with the Plaintiff; the Trial Court held that, the Plaintiff having been forcibly dispossessed, grant of the injunction in the manner done by the Trial Court was justified. Specific reference was made to the fact that the Mamlatdar in a proceeding for declaration of title of Mundkar of the suit house, at the behest of the Defendant, had dismissed an application vide order dated 23.07.2018, holding that the Defendant was not entitled to any right of protection under the Mundkar Act. It was submitted that the order of dismissal of the Mundkar application was considered along with other documents which inter alia include an affidavit dated 13.01.2023 of the Defendant, House Tax receipts in the name of one Saveriano Afonso (who the Defendant claim is her maternal uncle) , Electricity Bills also in the name of said Saveriano Afonso. It was submitted that the Trial Court had considered all these documents and arrived at the finding that the Plaintiff continued to be in possession of the suit property and the suit house after the death of Saveriano, they being owners of property under

Survey No. 180/14 with an area of 6400 sq. mtrs on which the suit house stood. It was submitted that the Trial Court has transgressed the jurisdiction vested under Order 43 by re-appraising all these documents and coming to a different conclusion from the one arrived at by the Trial Court. It was submitted that the impugned order has interfered with the discretion exercised by the Trial Court for reasons which are beyond its jurisdiction.

5. Per contra, Shri. Varun Bhandankar, learned Advocate for the Respondent supports the impugned Appellate Court's order submitting that the findings rendered by the Trial Court were perverse and on a wrong appreciation of the documents placed before it, he submits that merely because the Mamlatdar has dismissed the application for declaration, would not imply that the Respondent, though not in possession of the suit house, as the other evidence in the form of House Tax Receipt dated 28.10.2013, and other documents such as Electricity Bills are in the name of the Respondent's uncle Mr. Saveriano Afonso. He submits that the Trial Court has instead of considering these documents as prima facie evidence of possession of the Respondents, has chosen to examine the circumstances under which these documents were obtained at the stage of grant of temporary injunction and arrived at conclusions, which were

impermissible at the stage of considering the temporary injunction application.

6. It was further submitted that the Trial Court has literally granted temporary mandatory injunction and evicted the Defendant from the suit house which was impermissible at the interlocutory stage, more so because there was enough of material to demonstrate that the Defendant was in possession of the suit premises, at least as on the date of the filing of the suit. It is further submitted that the record does not in any way demonstrate that the suit house in possession was taken over by the Plaintiff on the demise of Mr. Saveriano in the year 2002 or on the demise of his wife Christalina in the year 2007 as alleged in the plaint.

7. He therefore contends that the interference in the order of the Trial Court by the Appellate Court holding that the order granted by the Trial Court suffers from perversity was legal and within the parameters of Order 43 of CPC. He further submits that the discretion exercised by the Trial Court was on improper consideration and it is for this reason, that the Appellate Court has rightly interfered with such improper exercise of discretion.

8. I have considered the submissions made by the learned Counsel on the record of the suit. I have perused the Judgment

and Decree dated 16.11.2021 of the Trial Court and the impugned Judgment of District Judge dated 09.03.2022. The question that arises for determination in this petition is whether the Appellate Court has transgressed its powers and jurisdiction under Order 43 of the CPC, in reversing the grant of an order of temporary injunction by the Trial Court.

9. Ongoing through the entire records, the following facts which have been taken note of by me would be relevant to the decision of this case. The Defendant Monica, claims to be the successor to the estate of her maternal uncle Saveriano Afonso, who expired on 15.10.2002. It is the case of the Defendant that Saveriano was a Mundkar of house No. 532, which stands in the suit property bearing Survey No. 180/14, which admeasures 6400 sq. mtrs and is admittedly, in the ownership and possession of the Plaintiff.

10. Reliance was placed on the House Tax Receipt dated 28.10.2013 in the name of Defendant Monica. Reliance by the Defendant Monica was also placed on an Electricity Bill dated 11.04.2023 in the name of Saveriano, who is the son of deceased Xavier. A House Tax Receipt has also been produced which is dated 28.05.2013 in the name of Saveriano and a certificate dated 26.10.2013 issued by the Sarpanch of Village Panchayat of Painguinim, Canacona that states that house

bearing No. 532 is registered in the name of the Defendant Monica. These are the documents that weighed in the mind of the Appellate Court to hold that the finding that the Defendant was not in possession of the house in question immediately before filing of the suit, as held by the Trial Court, was a perverse finding.

11. Examination of the record would reveal the following facts with regard to the documents produced by the Defendant to claim possession of the house bearing No. 532.

12. Xavier Afonso expired on 29.07.1977 and prior to this his wife Rita expired on 20.09.1969. Their son Saveriano expired on 15.02.2002 and his wife Christalina expired on 10.02.2007. The Electricity Bill dated 11.04.2013, produced stands in the name of Saveriano, whilst the House Tax Receipt dated 28.05.2013 also stands in the name of Saveriano. From these documents, it is clear that the Electricity Bill and House Tax Receipt in relation to the House bearing No. 532, stood in the name of Saveriano, who admittedly did not have any issues. This is in fact the case pleaded by the Plaintiff in the plaint which is not substantially denied by the Defendant. The Defendant Monica claims to be a successor to what she claims is a right of Mundkarship of her maternal grandparents Xavier and Rita and her maternal uncle Saveriano; she claims this right

on the premise that Saveriano had no children and the Defendant Monica was the daughter of Saveriano's sister Victoria. This is the claim made by the Defendant in their Written Statement as well as in the application for declaration of Mundkarship filed before the Mamlatdar on 23.10.2013.

13. Prior to filing that application before the Mamlatdar, the Defendant Monica filed an affidavit dated 13.01.2013 before the Panchayat, seeking repairs of the house bearing No. 532; in this affidavit, the Defendant Monica claims that her maternal grandparents and her maternal uncle had expired. After the demise of her uncle she claims that she was successor of the house bearing No. 532. Based on this affidavit, it appears that the certificate dated 26.10.2016 was issued by the Sarpanch of the village stating that the Defendant Monica was residing in that house. There is otherwise no proof of the Defendant residing in that house. Even the affidavit dated 13.01.2013 sworn and filed before the Panchayat states that the Defendant were resident of Maidem, Sadocar, Paiguinim, Canacona, Goa, and not of the house which is now claimed by the Defendant. It is also a matter of record that the Defendant name is registered in the electronic roll of Sadolxem, Paiguinim, Canacona, Goa and not at Polsore, Galjibag, Paiguinim, where the house No. 532 is situated.

14. After the House Tax was transferred to the name of the Defendant Monica on 26.10.2013, she filed the Mundkar application before the Mamlatdar on 23.12.2013, relying upon all these documents to her claim as a successor to the claim of Mundkar to the claim of Mundkarial right of her maternal grandfather and her maternal grand uncle Saveriano. This claim was dismissed by the Mamlatdar on 23.07.2018. The proceeding before the Mamlatdar were contested by the Plaintiff in the suit. This order of the Mamlatdar dated 23.07.2018 had attained finality for want of challenge in the Appeal. The very same documents, now relied upon before the Mamlatdar, having already being considered by the Mamlatdar, conclude that the Defendant Monica had no right to the claim of Mundkarship through Xavier Afonso. The question remains as to whether the Appellate Court, on reconsideration of these documents, that too, in its Appellate jurisdiction under Order 43, could have arrived at a different finding.

15. The Trial Court considered all this material, which included the House Tax Receipt, Electricity bill which earlier stood in the name of Saveriano and the Mamlatdar's Order, and concluded that the Plaintiff had made out a prima facie case that he was in possession of the suit house and the property under Survey No. 180/14 immediately after filing of the suit on 05.08.2019. The Trial Court, however proceeded with certain

caution, and instead of handing possession of the suit house to the Plaintiff, directed the Defendant to vacate the same to maintain the status quo until disposal of the suit and directed that the keys of the suit house to be deposited before the Court. In other words, the Trial Court, on prima facie considerations, has passed its order with a view to maintain the status quo and to preserve the subject matter of the suit. At this juncture, note must be taken that the reliefs sought in the suit are for an injunction against the Defendant from entering the suit property under Survey No. 180/14 and to recover possession of the suit house bearing House No. 532.

16. The findings rendered by the Trial Court on all this material would by no means be termed as perverse. The view taken by the Trial Court was a plausible view, and the discretion exercised was based upon a sound consideration of the earlier record. Even if a different view was possible, the provisions of Order 43 of CPC do not permit the Appellate Court to reconsider the material on record and come to a different view.

17. This principle has been well settled and has been considered way back in the year 1990 by the Hon'ble Supreme Court in *Wander Ltd. (supra)*. The relevant paragraphs of the Judgment are quoted below:

“13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will, not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles **Gajendragad kar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph: (SCR 721)** “... These principles are well established, but as has been observed by **Viscount Simon in Charles Osenton & Co. v.**

Jhanaton? ...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

18. Perusal of the Judgment of the Appellate Court would reveal that the Appellate Court has reconsidered the decision rendered by the Mamlatdar in the Mundkar proceeding and has concluded that since the uncle of the Defendant, Saveriano, and his wife Rita Christalina, who are now deceased, the Defendant would have the right to inherit the suit house. The findings rendered are much beyond the powers vested in the Appellate Court under Order 43. It was the claim of the Defendant Monica that she was staying in the suit house prior to 2013. There are obviously no documents produced by the Defendant, to substantiate this claim, and this claim would have to be proved in evidence. However, there is now a Judgment of the Mamlatdar, considering these very same documents and arriving at the conclusion that even if Xavier was the Mundkar of the house, even though Xavier was never declared a Mundkar or has purchased the dwelling house, the Defendant Monica could not have been a successor, being the daughter of Xavier's married daughter. The Mamlatdar has also concluded that even in accordance of the Mundkar Act, Monica's mother

Victoria, could not have claimed the right of Mundkar, since she was a married daughter of original claimant Xavier; this is not a case where, Xavier's right has been decided, and these are only claims made by the Defendant that Xavier was the Mundkar of the house. It is in this background, the Appellate Court could not re-appreciate the material on record, more so when the Mamlatdar has specifically concluded that the Defendant would have no right of Mundkarship and that finding has become right.

19. The suit house was within land under Survey No. 180/14 which admittedly belongs to the Plaintiff. There is no dispute on this fact. Prima facie therefore, when the Defendant has not shown any title to the suit house, even though the House tax and Electricity Bill stood in the name of her uncle and grandfather, that would not entitle her to claim possession. All that the Trial Court did was to preserve the subject matter of the suit until the final Judgment would be delivered, which is the whole aim of the interlocutory proceeding under Order 43 of CPC.

20. The Appellate Court has therefore clearly transgressed the jurisdiction vested under Order 43 of CPC and has acted with material irregularity in interfering with the findings

rendered by the Trial Court, when there is no justification for arriving at such findings.

21. The Trial Court has acted in clear violations of the principles laid down by the Hon'ble Supreme Court and as referred to in ***Wander Ltd.*** (*supra*), as to the parameters within which the Appellate Court would reverse a finding for an order given by the Trial Court on an application for temporary injunction.

22. For all the aforementioned reasons, the impugned order passed by the District Court cannot be sustained. The impugned order is therefore quashed and set aside. The order dated 16.11.2013 shall continue in operation till the disposal of the suit or till such time as the Trial Court varies or vacates the same.

23. Rule is made absolute in terms of prayer clause (a), which reads as under:

“i) for a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order, direction of this Hon'ble Court calling for the records and case papers of Regular Civil Suit No.44/2019 from the Court of the Civil Judge Junior Division, Canacona and of the Misc. Civil Appeal No. 43/2021 from the Court of District Judge-2, FTC-II, Margao and after perusing the same and after going through the legality and propriety thereof quashing and setting aside the

*impugned Judgment and Order dated
09.03.2022;”*

24. No order as to costs.

VALMIKI MENEZES, J.